STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHELLE LYNN ERICKSON,

Defendant-Appellee.

UNPUBLISHED
September 28, 1999

No. 214359
Livingston Circuit Court
LC No. 98-010501 FH

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

The prosecution appeals as of right from an order of the circuit court quashing the information and dismissing the charges against defendant. We affirm.

The incident in this case occurred on April 26, 1998 at approximately 11:00 p.m. Livingston County sheriff's deputies responded to a 911 call that an individual was attempting to assault pedestrians with a vehicle at the corner of Grand River and Kellogg Road. Deputy Sneath pulled over the suspect attempting to hit the pedestrians. Two other deputies, Deputy Shawn Callahan and Deputy Donald Jakrewski, who were in a different police car, were aware that Deputy Sneath had pulled over a suspect. Deputies Callahan and Jakrewski continued to travel on Kellogg and saw two women walking about one-half mile away from the reported incident. Deputy Callahan stopped the police car, activated the emergency lights, and exited the vehicle to check the identification of the two women.

Deputy Callahan approached the two women and stated that they did not appear to be injured, but that one of the women (defendant) appeared to be upset and her eyes were red. Deputy Callahan questioned defendant whether she was all right. Defendant responded that she was fine and "there was nothing against the law for walking down the road." The women also indicated that they lived about one mile up the road and that they just wanted to walk home. Defendant's companion, Mrs. Myers, told the deputies that defendant had been in an argument with her husband. Defendant then started to walk away, but Deputy Callahan asked her to stop "because we were trying to make sure that everybody was all right and find out what happened at Grand River and Kellogg Road." Defendant again stated that nothing was wrong and started to walk away. Deputy Jakrewski then stepped toward defendant, stated, "we're not going anywhere yet," grabbed her arm so that the deputies could detain

her, and defendant pulled her arm away from Deputy Jakrewski. Deputy Callahan walked over to secure defendant's left arm, while Deputy Jakrewski attempted to secure her right arm, and defendant then kicked Deputy Callahan in the right thigh. Deputy Callahan was able to put defendant in a "transport wrist lock," handcuffed her, and put her in the police car.

Deputy Callahan admitted that neither woman appeared to be lying to him and he had no reason to believe that defendant was dangerous to him. Deputy Callahan further admitted that he did not believe that defendant was trying to commit a crime and that he did not believe that defendant had committed a crime, but he did not know for sure. Likewise, Deputy Jakrewski testified that that he did not believe that defendant was committing a crime when he exited the police car and he did not believe that she was a threat when she stated that she just wanted to walk home.

Defendant was ultimately taken to the county jail, and, during the booking process, correctional officers discovered marijuana in defendant's purse. Defendant was charged with resisting and obstructing an officer discharging a duty and possession of marijuana. The district court bound defendant over for trial following the preliminary examination, finding that the deputies had a right to make a basic inquiry and investigate whether the women were victims or perpetrators in the alleged assault. Defendant moved to quash the information on the basis that her arrest was in violation of the Fourth Amendment. The circuit court granted the motion and dismissed the charges against defendant.

This case concerns whether the deputies had reasonable suspicion under the Fourth Amendment and *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968) to perform an investigatory stop of the two women who were walking home. The right against unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, § 11; *In re Forfeiture of $176,598*, 443 Mich 261, 264-265; 505 NW2d 201 (1993). Brief investigative stops short of an arrest are permitted where police officers have a reasonable suspicion of ongoing criminal activity. *People v LoCicero (After Remand)*, 453 Mich 496, 501; 556 NW2d 498 (1996); *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996); *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). The Court in *Champion, supra* at 98-99 stated:

> A valid investigatory stop must be justified at its inception and must be reasonably related in scope to the circumstances that justified interference by the police with a person's security. Justification must be based on an objective manifestation that the person stopped was or was about to be engaged in criminal activity as judged by those versed in the field of law enforcement when viewed under the totality of the circumstances. The detaining officer must have had a particularized and objective basis for the suspicion of criminal activity.

The record clearly indicates that both deputies were aware that the suspect vehicle had been pulled over before the confrontation with defendant and her companion. Defendant and her companion were walking one-half mile away from the location identified by the 911 caller and were not in possession of a vehicle. Defendant and her companion repeatedly stated that they were physically all right and that they just wished to continue on their way home. Finally, the deputies admitted on cross-

examination in the preliminary examination that they did not suspect the women of either committing a crime or of being dangerous.

Our Supreme Court has noted that police officers may not detain a person even momentarily without reasonable, objective grounds for doing so. *People v Taylor,* 454 Mich 580, 589-590; 564 NW2d 24 (1997); *People v Shabaz,* 424 Mich 42, 57; 378 NW2d 451 (1985), citing *Florida v Royer,* 460 US 491, 497-498; 103 S Ct 1319; 75 L Ed 2d 229 (1983) (White, J.). The facts clearly indicate that the deputies did not have reasonable, objective grounds for detaining defendant at the moment where Deputy Jakrewski indicated to defendant that she was not going anywhere and grabbed her arm. There are no facts from which the police officers could have suspected defendant of engaging in criminal activity or any wrongdoing. Indeed, the deputies conceded that they did not believe that defendant had committed or was committing any crime.

The detention of defendant was clearly illegal and in violation of the Fourth Amendment. See *LoCicero, supra* at 506-508. "Where a defendant is being seized, apprehended, or arrested, the illegality of the seizure is a complete defense to the charge of resisting an officer making an arrest." *People v Landrie,* 124 Mich App 480, 482; 335 NW2d 11 (1983). Further, because the seizure of defendant was unlawful, the marijuana found in her purse must be suppressed as fruit of the poisonous tree where that evidence was obtained directly as a result of the illegal seizure. *Wong Sun v United States,* 371 US 471, 485; 83 S Ct 407; 9 L Ed 2d 441 (1963); *LoCicero, supra* at 507-510.

Accordingly, the circuit court did not err in dismissing the charges against defendant.

Finally, we order that defendant's motion for costs and attorney fees is denied.

Affirmed.

/s/ Richard A. Bandstra
/s/ Kathleen Jansen
/s/ William C. Whitbeck